IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

RP.No. 737 of 2006(I)

AGAINST THE JUDGEMENT IN W.P.(C).NO.7649/2006 DATED 03/07/2006.
.....

REVIEW PETITIONER/3RD PARTY WITH LEAVE PETITION:

SUMA.K., 'ATHIRA', THUKALASSERY,
THIRUVALLA - 689 101.

BY ADV. SRI.D.KISHORE.

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 4 IN W.P.(C):
----

1. **M.SYED MASOOD, KAJA MANZIL, NJETTOOR, KULANADA P.O., PATHANAMTHITTA, PRESIDENT, PARENT TEACHERS ASSOCIATION, PANCHAYAT HIGHER SECONDARY SCHOOL, KULANADA.**

2. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, LOCAL SELF GOVERNMENT (H) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

3. **PANCHAYAT DIRECTOR, THIRUVANANTHAPURAM.**

4. **DIRECTOR, HIGHER SECONDARY EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.**

R.P. NO. 737/2006:

5. KULANADA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY AND MANAGER GRAMA PANCHATAT, HIGHER SECONDARY SCHOOL, KULANADA.

BY ADV. SRI.K.R.RADHAKRISHNAN NAIR,
SRI.K.SASIKUMAR,
SRI.RINNY STEPHEN,
SR.GOVERNMENT PLEADER SRI. T.T. MUHAMOOD,
SRI.K.R.B.KAIMAL,
SRI.K.R.RADHAKRISHNAN NAIR,
SRI.K.RAMAKUMAR.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 09/10/2006, ALONG WITH W.P.(C). NO. 21558/2006,THE COURT ON 27/06/2007 PASSED THE FOLLOWING:

A.K. Basheer, J.

**- - - -

3. Review petitioner who claims that she is qualified to be appointed as a Higher Secondary School Teacher contends that the Panchayat is not entitled to make selection and appointment of teachers in the school on its own. Placing heavy reliance on rule 1(3) of Chapter XIV-A KER, it is contended that only candidates advised by the Kerala Public Service Commission shall be appointed as teachers in schools managed by local self-Government institutions. Initially, appointments in the schools run by Local Statutory bodies were made by the Government in terms of Rule 2(2) of Kerala Panchayat (Spread of Education) Rules 1964. The above clause in Rule 2 postulated that the Panchayat shall be the Educational Agency and its Executive Officer shall be the Manager in respect of the schools run by it. The Executive Officer in his capacity as the Manager was empowered to make appointments. However the above Rules made it clear that establishment and maintenance of schools under the Panchayat would be subject to the provisions contained in the Kerala Education Act 1958 and the Rules made thereunder. Rule 1(3) of Chapter XIV-A KER , as it stood prior to its amendment in the year 2000, postulated that appointment of teachers in schools managed by Panchayats shall be made from among the qualified hands advised by Employment Exchange. The above rule was further amended in April 2000 which reads thus:

"1(3). Subject to Rule 51A, candidates

> advised by the Kerala Public Service Commission shall be appointed as teachers in schools managed by local self-Government institutions"

4. Learned counsel points out that the Government had recently clarified through a circular dated August 7, 2006 (No.22346/H1/06/LSGD) that the policy decision of the Government to entrust recruitments to the posts in Primary and High School under the Panchayat to the PSC, would be applicable to Panchayat Higher Secondary schools also. A copy of the circular has been made available for perusal.

5. However it is contended by Sri.K.R.B Kaimal, learned senior counsel for the respondents that the appointment to the post of teaching and non-teaching staff in Higher Secondary Schools having been codified and regulated by the provisions contained in Chapter XXXII KER, the contention raised by the review petitioner cannot be countenanced at all. He further contends that so long as the statutory rules are not amended by a procedure known to law, it would be idle for the petitioner to contend that an executive order or circular issued by the Government would govern the field. My attention has been invited to some of the decisions of this Court to contend for the position that the provisions contained in the KER would not be applicable to the Higher Secondary Schools unless they are specifically incorporated in the relevant Chapter. (***Varghese v.***

Deputy Director of Education (2002 (2) KLT 109 FB)), Manager, Trikkur Panchayat Sarvodaya High School v. Suma **(2003 (2) KLT 62 (FB), Krishnankutty & Ors. v. State of Kerala (1998 (2) KLJ 301 and Aby Mathew v. Sinu M. Jose (WA.2025/2002)** .

6. The thrust of the argument of the learned Senior counsel is that so long as the power to make selection and appointment of Higher secondary School Teachers is vested with the Manager as contemplated under Chapter XXXII, the provisions contained either in Chapter XIV-A or other Chapters or for that matter any order/circular issued by the Government would not come to the rescue of the review petitioner. He points out that the schools under the management of Panchayats are treated as aided institutions. It is therefore all the more reason that the right vested with the Manager to make selection and appointment of teachers in the Higher Secondary Section under Chapter XXXII cannot be taken away. I am afraid the above contention raised by the learned senior counsel is misconceived.

7. It may be true that schools run by the local self Government institutions are treated as aided institutions. It cannot also be disputed that the provisions contained in Chapter XXXII KER will govern the field as far as Higher Secondary Schools are concerned. But it is trite that in the absence of specific Rules, executive orders can be issued to meet a contingency. It will be open to the Government to issue such orders or circulars which

may be found necessary to fill up a lacuna in the Rules, if the situation so warrants. Viewed from that angle, the policy decision of the Government to entrust the duty of selection and appointment to the Kerala Public Service Commission in the Higher Secondary Schools managed by the local self Government institutions, cannot be faulted at all.

8. It has to be remembered that the Government has got an effective and pervasive control over the local self Government institutions. As mentioned earlier, it is the admitted position that the schools under the local self-Government institutions like Municipalities and Panchayats are treated as aided institutions. Section 10 of the Kerala Education Act empowers the Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government and private schools. Section 10A postulates that subject to such terms and conditions and as may be prescribed by the Government, the local authority may make temporary appointment to any temporary vacancy of a teacher in any school under its management through the Employment Exchange from among persons who possess qualification prescribed under Section 10. As noticed already, sub-rule (3) of Rule 1 of Chapter XIV-A, as it now stands, stipulates that candidates advised by the Kerala Public Service Commission shall be appointed as teachers in the school managed by local self-Government institutions. Section 12 prescribes the conditions of service of teachers in aided schools.

Section 12A deals with the power of Government over teachers of aided schools which would undoubtedly take within its fold the schools under the local self-Government institutions also. Sections 14 and 15 further empower the Government either to take over management or to acquire any category of schools.

9. Reference has been made to the above statutory provisions only to highlight the fact that the Government has got considerable authority and power over aided institutions under the scheme of things now governing the field. It is more so in the case of schools under the management of such local bodies. The above being the position, the contention raised by the learned Senior counsel that higher secondary section in the school run by a local self-Government institution would become an independent and separate entity outside the purview of the Kerala Education Rules after introduction of Chapter XXXII and that only the provisions contained in the said Chapter would be applicable in the case of higher secondary section, cannot be entertained at all. It may be true that Chapter XXXII contains a Code of Rules governing higher secondary schools. But still it cannot be said that the Manager of the higher secondary school has become the repository of all powers, sans any control by the Government or other authority not specified in Chapter XXXII. Higher secondary section in an existing high school which is being run by a local self-Government institution will nevertheless remain to be a part of the institution. The Government or other competent

departmental authority under which the educational agency may come, does not cease to have the over all administrative control.

10. As mentioned earlier, the Government is empowered to issue executive orders in cases where there is any lacuna in the Special Rules. The circular issued by the Government on August 7, 2006 is one such instance in point. It is pertinent to note that the Public Service Commission has been entrusted with the responsibility to make appointment in the schools in the Panchayat as provided under Rule 1(3) of Chapter XIV-A. The Government has clarified that the above procedure will be made applicable in the case of higher secondary schools under the Panchayats also. The above decision taken by the Government cannot be termed as either illegal or arbitrary.

11. The judgment in the Writ Petition was rendered in a totally different circumstance. It was brought to the notice of this Court that the Government had issued Ext.P5 order solely on the basis of a letter received from the District secretary of a political party without hearing the Panchayat. There was no clue in the said letter as to what was the nature of the complaint lodged against the Panchayat. While disposing of the writ petition, this Court had made it explicitly clear that the selection process should be in accordance with the statutory mandates. Since this Court was not called upon to consider the question whether or not the proposed selection process was in accordance with the statutory mandates, there was no occasion to deal with that issue

at all. It has now turned out that the Panchayat wanted to make selection and appointment by constituting a Selection Committee as provided under Chapter XXXII. It is true that the circular referred to above was issued by the Government only on August 7, 2006, after disposal of the writ petition. Therefore the Panchayat might not have been at fault if it thought that selection process could be completed in terms of the provisions contained in Chapter XXXII. In any view of the matter, the position now having been made clear, it becomes incumbent on the Panchayat to ensure that it complies with the direction of the Government. In other words, the recruitment can be made only through the Public Service Commission. Therefore the judgment is reviewed and the above clarifications are issued.

12. W.P.No.21558/2006 is filed by some of the teachers who are working in the higher secondary school under the Panchayat. According to them they have been working in the school since 2004. It is contended by them that they had applied for selection pursuant to the notification issued by the Panchayat. The prayer in the writ petition is to issue a writ of mandamus or such other appropriate writ, order or direction to the Panchayat to strictly adhere to the eligibility conditions specified in the notification and to select only those who have sufficient teaching experience.

13. In view of the order passed by me in the review petition as indicated above, the prayer made by the petitioners in

this writ petition have become irrelevant. Therefor petitioners cannot be granted any relief.

Review Petition and Writ Petition are disposed of in the above terms.

A.K.Basheer,
Judge.

an.